HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. (SS) No. 401/2004

Brijpal Singh

Vs.

D.I.G. of Police and others

Approved for reporting

_____

~~Not approved for reporting~~

20.04.2004

Date of decision

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 401 of 2004 (SS)

Brijpal Singh …… Petitioner

Versus

Deputy Inspector General of Police & others…… Respondents

Sri C.K. Sharma, Advocate for the petitioner.

Standing Counsel for the respondents.

Dated: 20.4.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ of in the nature of certiorari quashing the order dated 13.12.2000 and 20.3.2004, annexure 1 to 6 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that the petitioner was posted as constable at police line, Udham Singh Nagar and the petitioner was placed under suspension for his absence from duty for short durations. The respondent no. 3 was appointed Enquiry officer. The petitioner informed the enquiry officer by registered post that he has sustained fracture in his leg and therefore, he was unable to attend the duty as well as the enquiry

proceedings. Respondent no. 3 has completed the inquiry in the absence of the petitioner and submitted his inquiry report on 15.11.2000. Respondent no. 2 issued a show cause notice to the petitioner and ultimately on 13.12.2000 respondent no. 2 issued an order of dismissal thereby terminating the services of the petitioner. The petitioner has preferred an appeal before the respondent no. 1 against the said order of dismissal which is still pending. The petitioner has stated that he has filed a writ petition No. 3276 of 2001 (SS) challenging the order dated 13.12.2000 but the same was rejected on the ground of alternative remedy. The petitioner has stated that thereafter he moved a representation before the respondent no. 1 with the prayer that since the appeal is pending and the same may be decided expeditiously but strangely enough the respondent no.1 with the prayer that since the appeal is pending and the same may be decided expeditiously but strangely enough the respondent informed the petitioner vide letter dated 29.3.2003 that no appeal was received by the office of the respondents. The petitioner has further submitted that he moved a fresh appeal to the respondent through his counsel. The petitioner has contended that on the earlier occasion the appeal was filed through registered post and if the same has not been received in the office of the respondent, the petitioner cannot be held responsible for the fault of the postal department and the appeal may be treated with limitation. The petitioner has further stated that the respondent instead of taking any decision on the appeal presented by

the petition, refused to take any decision on the appeal of the petitioner.

It is a case where the petitioner has been denied an opportunity of placing his case before the appellate authority. He has submitted his appeal through registered post and if the appeal has not reached to its destination, the appellant cannot be said to be at fault. The appellant thereafter submitted another appeal before the appellant authority who should have considered the appeal instead of dismissing the same on mere technicalities. The rights of the petitioner have to be protected and technicalities should not come in the way of justice.

Suffice it to state that it is rule of natural justice that no one should be condemned unheard, as held by the Apex Court in the case West Bengal Electricity Regulatory Commission vs. C.E.S.C. Ltd. JT 2002 (7) SC 578, relying upon the case of Mrs. Maneka Gandhi vs. Union of India & Another, 1987 (1) SCC 248 as under:

"The right of audi alterma partem is a valuable right recognized even under the India Constitution. See Mrs. Menka Gandhiji vs. Union of India and another, 1978 (1) SCC 248 wherein it is held, the principle of the maxim which mandates that no one should be condemned unheard; is a part of rule of natural justice. We have already held that such right of hearing conferred by a statute cannot be taken away even by court."

In view of the facts and circumstances mentioned above, the respondent no. 1 is directed to decide appeal of the petitioner within six weeks after the receipt of the certified copy of this order. In case memo of appeal is not available in the office of the respondent no. 1, the petitioner shall be at liberty to give a copy of memo of appeal to the respondent no. 1.

With the aforesaid observations, the writ petition is finally disposed of. No order as to costs.

Rajesh Tandon.

20.4.2004

Dhyani